S.B. CIVIL MISC. APPEAL NO.859/2007
(Momina Khatun & ors. Vs. Pradeep Kumar & ors.)

Date of Order :: 22nd February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Surendra Surana with
Mr.Ballu Singh for the appellants

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Having heard learned counsel for the claimant-appellants and having examined the award impugned, this Court is satisfied that the instant appeal for enhancement over the amount of compensation awarded by the Tribunal does not merit admission.

On 22.09.2002 near Guda-Endla on Kotda to Jodhpur road, a jeep bearing registration No. RJ 27 C 5712 rammed into a truck-trailer bearing registration No. GJ 12 V 6396 it was following; and in the resultant accident, an occupant of the jeep, Badruddin about 63 years in age, husband of the appellant No.1, father of the appellants Nos.2 and 3 and brother of the appellant No.4 sustained grievous injuries and succumbed. The claimant-appellants claimed compensation arraying Ram Singh, Pradeep Kumar, and United India Insurance Company Ltd., respectively the driver, owner and insurer of the aforesaid truck-trailer as non-applicants Nos.1 to 3; and Mohammed Tauhid, Kurban Hussain son of Badruddin,

and National Insurance Company Ltd., respectively the driver, owner and insurer of the aforesaid jeep as non-applicants Nos. 4 to 6. Liyakat Hussain, another son of Badruddin was joined as non-applicant No.7. The claimants asserted the accident to have occurred for the fault and negligence of both vehicle drivers; and sought compensation in the sum of Rs.56,15,000/- with the submissions that the deceased was about 60 years in age and was earning about Rs.15,000/- per month while working as a Small Savings Agent, in a private job, and from agriculture.

After framing of necessary issues with reference to the replies submitted by respective Insurance Companies, the Tribunal recorded evidence wherein the claimants examined AW-1 Momina Khatun, wife of the deceased; AW-2 Rahmatullah, an eye-witness to the accident as another occupant of the jeep in question; and AW-3 Ali Asgar in relation to the private job of deceased as Munim on his shop; and produced documentary evidence Ex.1 to Ex.24. The non-applicants led no evidence whatsoever.

After hearing the parties, the Tribunal found in issue No.1 that the accident occurred for equal contribution of both the vehicle drivers and rejected other contentions of the insurers for their exoneration for want of evidence. In relation to quantification of compensation, the Tribunal examined the

evidence available on record; and observed and found thus:

(a) With reference to the age certificate Ex.1 and Pension Payment Order, the Tribunal noticed the date of birth of deceased as 10.08.1939 and found him of 63 years 1 month and 12 days in age on the date of accident i.e. 22.09.2002.

(b) The Tribunal noticed that the deceased retired as a teacher from Education Department and was getting pension of Rs.7,451/- with reference to his pension bill Ex.3.

(c) In relation to the assertion of his income from agriculture at Rs.50,000/- per annum, the Tribunal observed that no documentary evidence was produced regarding agricultural land and the deceased was above 63 years of age; and if at all there was any agricultural land available, the claimants were in a position to earn out of the same.

(d) The Tribunal also noticed the assertion of the claimants that deceased was getting salary of Rs.3,000/- per month while working as accountant at a shop M/s. M.Z. Brothers but upon analysis of testimony of AW-3 Ali Asgar noticed that the salary certificate Ex.2 was issued by his father, the alleged proprietor of the shop who was not produced in evidence; and that the annual turn-over of the said shop was said to be about Rs.20,000-30,000/- per annum i.e., about Rs.1,750–2,500/- per month; and observed that on a shop with a monthly turn-over of about Rs.2,500/- and said to be engaged in the

business of hardware, crockery and stationery in the Adivasi area of Kotda, an accountant was not likely to be engaged on monthly salary of Rs.3,000/- and rejected such assertion of the claimants.

(e) With reference to the letter Ex.4 and certificate Ex.5 the Tribunal found that the deceased was getting about Rs.5,000/- per month in commission as a Small Savings Agent; but observed that due to tough competition the agents do part with their commission to the depositors to earn more business and, therefore, took his net income from such source at 50% of the commission i.e., Rs.2,500/- per month.

After the considerations and analysis aforesaid, the Tribunal took rounded off net income of the deceased at Rs.9,950/- per month with reference to his pension at Rs.7,451/- and commission income at Rs.2,500/- per month leading to annual income at Rs.1,19,400/-; and after deducting one-third wherefrom and with application of multiplier of 5 assessed pecuniary loss at Rs.3,98,000/-. The Tribunal further allowed Rs.2,000/- towards funeral expenses and Rs.5,000/- to the wife of the deceased towards loss of consortium. The Tribunal denied any amount on treatment expenditure finding that the deceased expired on the very day of accident.

The Tribunal, therefore, proceeded to award compensation in the sum of Rs.4,05,000/- and allowed interest

at the rate of 6% per annum but only from 01.04.2004 with the observations that the delay was caused in disposal of claim application by the claimants; though while issuing final directions, the Tribunal has stated awarding of interest at the rate of 6% per annum from the date of filing of claim application after adjustment of the amount, if any, received under No Fault Liability. The Tribunal found only the wife and unmarried daughter of the deceased to be the dependents; and apportioned the award amount at 20% to the daughter and 80% to the widow.

Questioning the award aforesaid and seeking enhancement, learned counsel appearing for the appellants has contended that the Tribunal has been in error in rejecting the component of income earned by the deceased as an accountant on irrelevant considerations; that the Tribunal has further erred in not taking into consideration the income of the deceased at Rs.5,000/- per month from his job as Small Savings Agent and in restricting such component of income only at Rs.2,500/- per month; and that the Tribunal has erred in not awarding interest from the date of filing of claim application. The submissions do not merit acceptance upon examination of the award in its entirety.

In the first place, it is noticed that the age of deceased was above 63 years and the same was specifically available in

the form of documentary evidence for the deceased having retired from government service; yet the claimants chose to state his age in the claim application at 60 years. Further, the assertion about his income as an accountant at a shop has not only found to be incorrect but was based on made-up evidence. The conduct of the claimants unfolds the intention of extracting excessive compensation even by stating incorrect facts, concealing material facts, and putting forward false evidence; and it is apparent that the claimants had not been forthright in their submissions while seeking compensation. .

The Tribunal has rightly rejected the assertion of income of the deceased as an accountant when AW-3 Ali Asgar would say that the annual turn-over of his shop was Rs.20,000-30,000/-. It sounds rather preposterous to suggest that on such a shop having monthly turn-over of not more than Rs. 2,500/-, an accountant would be employed on a salary of Rs.3,000/- per month. The Tribunal, for want of documentary evidence and for it being available to the claimants if at all there were any agricultural land, has also rightly rejected the component of agriculture income as suggested by the claimants.

So far the commission income is concerned, of course, the observations made by the Tribunal about payment to the depositors and reducing net income only on that count does

not appear to be of sound proposition but then, some expenditure by the deceased in relation to such job of Small Savings Agent, like conveyance, telephone, stationery and other office expenses cannot be ignored altogether and the entire of the commission received cannot be taken as his net income. Moreover, the Tribunal has proceeded to take entire of his pension at Rs.7,451/- towards the loss of claimants and then has deducted only one-third on his personal expenditure. In the context of the fact situation of the present case where the wife of the deceased had admitted her getting Rs.4,000/- towards pension and sons of the deceased are found self-sufficient and there being only two direct dependents, i.e. wife and daughter, taking of two-third of the assessed income towards loss of dependency definitely sounds excessive.

The Tribunal while examining the statement of wife of deceased has noticed the fact that her son Liyakat Hussain (non-applicant No.7) was working as Senior Teacher; her son Eliyas Hussain was earning from a shop and an STD Booth; and that her third son Kurban Hussain was serving as a driver. It is noticed that in the present case, Kurban Hssain son of Badruddin has been arrayed as non-applicant No.5 but in the capacity of the owner of jeep involved in accident. Be that as it may, taking view of the overall picture, this Court is firmly of opinion that in this case, the assessment of annual income of

the deceased at Rs.1,19,400/- has been on the higher side and then, two-third of such estimated income could not have been taken towards loss of dependency and such amount towards loss of dependency at Rs.79,600/- per annum is nothing but excessive.

Application of multiplier of 5 upon such excessive assessment of annual loss of dependency has led only to an excessive amount towards pecuniary loss at Rs.3,98,000/-. In the aforesaid view of the matter, even when the observations as made by the Tribunal for restricting award of interest only from 01.04.2004 in the body of the award (though not stated in the final directions), and not from the date of filing of claim application 15.03.2003, appear questionable yet remain inconsequential and cannot be said to have resulted in injustice; particularly when the principal amount of compensation has itself been excessive

In the ultimate analysis, the award of compensation as made by the Tribunal remains rather excessive and rules out any scope for enhancement at the instance of the appellants.

The appeal fails and is, therefore, dismissed summarily.

MK **(DINESH MAHESHWARI), J.**